

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

JANET L. COIT,
in her capacity as Director,
RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Plaintiff

vs.

C. A. No. PC 18-0092

SEVILLE ASSOCIATES and
ROBERT PICCIOTTI d/b/a/
SEVILLE ASSOCIATES
Defendants

**VERIFIED COMPLAINT AND
PETITION TO ENFORCE A FINAL COMPLIANCE ORDER**

Statement of the Case

This matter arises as a result of Defendant’s ownership and/or operation of certain property in which violations of the Rhode Island Department of Environmental Management’s (the “Department” or “DEM”) *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”) have occurred and continue to occur. This matter seeks to enforce a Final Compliance Order in accordance with R.I. Gen. Laws § 42-17.1-2(21)(v). The compliance order in question became final and effective as a result of the property owner and/or operator’s failure to request a hearing before the Department’s Administrative Adjudication Division. Plaintiff seeks the enforcement of the original Notice of Violation and Order (the “NOV”) as a Final Compliance Order, including, but not limited to, compliance with the UST Regulations and the payment of all administrative penalties as set forth therein.

PARTIES

(1) Plaintiff, Janet L. Coit, is the duly appointed Director (“Director”) of the Rhode Island

Department of Environmental Management, a duly-authorized agency of the State of Rhode Island, having offices located at 235 Promenade Street, Providence, Rhode Island, 02908.

(2) Defendant, Seville Associates, was originally formed as a Rhode Island General Partnership; Robert Picciotti is the only surviving partner of said partnership.

(3) Robert Picciotti, is a resident of the State of Rhode Island with a residence of 30 Woodward Road in the Town of Narragansett, Rhode Island.

JURISDICTION & VENUE

(4) Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v), as amended, and R.I. Gen. Laws § 8-2-13, as amended.

(5) Personal jurisdiction over the Defendants in this case are properly conferred in this Court based upon the Defendants' operation and ownership of real property located within the State of Rhode Island.

(6) Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v) and R.I. Gen. Laws § 9-4-3, as amended.

FACTS

(7) According to the City of Woonsocket land evidence records, Seville Associates is the owner of record for the subject property which is identified by the City of Woonsocket Assessor's Plat 6A, Lot 118 Unit 8, and is located at 229 First Avenue in the City of Woonsocket, Rhode Island (the "Property").

(8) The Property includes a former mill building and underground storage tank (the "Facility").

(9) The Facility is registered with the Department pursuant to Section 6.00 of the Department's *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations") as UST Facility #03479.

(10) The Underground Storage Tank ("UST or "Tank") is registered with DEM as follows:

<u>UST ID No.</u>	<u>Capacity</u>	<u>Substance Stored</u>
1	20,000 gallons	Heating Oil No. 6

(11) On or about March 1, 2011, November 18, 2013 and March 27, 2014 Rhode Island Department of Environmental Management ("RIDEM" or the "Department") inspected the Property.

(12) On or about February 28, 2011, The Mill on the Property was destroyed by fire.

(13) The UST was not destroyed and remains in place and no longer is in use.

(14) RIDEM has sent a minimum of four letters regarding the abandonment of said UST.

(15) On or about September 29, 2014 the Department issued a NOV to Robert Picciotti d/b/a Seville Associates and Seville Associates alleging violations of the UST Regulations for not complying with:

- (a) Rule 6.10 of the UST Regulations, requiring the owner to pay annual UST registration fees to RIDEM;
- (b) Rule 13.02(A) of the UST Regulations, prohibiting the abandonment of USTs;
- (c) Rule 13.05 of the UST Regulations, requiring the owner to permanently close a UST in accordance with RIDEM's UST Regulations if a UST has been abandoned or removed from operation for more than 180 days without the DEM's permission.

(16) The NOV ordered:

- (a) Within ninety (90) days submit a permanent closure application to the RIDEM-Office of Waste Management and complete the removal of the UST in accordance with Section 13.00 of the DEM's UST Regulations;
 - (b) Within thirty (30) days of the removal of the UST remove and properly dispose of any contaminated soil encountered during the tank closure and within ten (10) days of the soil disposal submit documentation of disposal to DEM in accordance with Section 13 of the DEM's *Oil Pollution Control Regulations*;
 - (c) Within sixty (60) days of receipt of written notification from DEM to conduct a site investigation of the Property, retain a qualified consultant to perform the site investigation and submit a Site Investigation Report to DEM within the time frame specified by the DEM in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations;
 - (d) Within sixty (60) days of receipt of written notification from the DEM to submit Corrective Action Plan ("CAP"), retain a qualified consultant to submit a proposed CAP to DEM in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an order of approval issued by DEM;
 - (e) Pay the administrative penalty of Seven Thousand Eight Hundred and Seventy-Three (\$7,873.00) Dollars.
- (17) The NOV was recorded in the Land Evidence Records for the City of Woonsocket on October 6, 2014.
- (18) No request for an administrative hearing was made.
- (19) The NOV and associated administrative penalties contained within (pursuant to *R.I. Gen. Laws* §§ 42-17.1.2(21)(vi) and 42-17.6-4(b)) automatically became a Final Compliance Order enforceable in Superior Court.
- (20) The failure of the Defendants to comply with all terms of the NOV represents a continuing violation of the Department's UST Regulations.
- (21) As of the date of the filing of this Complaint, the Defendants have failed to perform all Orders of the Final Compliance Order or NOV.

COUNT I

(Violation of Final Compliance Order)

(22) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 21 above.

(23) The NOV issued on or about September 29, 2014 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(24) In accordance with R.I. Gen. Laws § 42-17.1-2(21), the aforementioned NOV notified the operator and the owner of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; and of the right to request an administrative hearing before DEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV.

(25) By failing to appeal the issuance of the NOV, one is deemed to have waived its rights to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the Department.

(26) Pursuant to *R.I. Gen. Laws* § 42-17.1-2(21)(vi), a Final Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Final Compliance Order rests with the Defendants.

(27) The Defendants have failed or refused to comply with all the Orders of the NOV by performing the actions required.

(28) Each day on non-compliance represents a continuing violation of the Department's UST Regulations.

COUNT 2

(Violation of Final Compliance Order Administrative Penalties)

(29) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 28 above.

(30) The NOV issued on or about September 29, 2014 was issued pursuant to R.I. Gen. Laws § 42-17.1-2(21).

(31) The Administrative Penalties assessed in the NOV on or about September 29, 2014, were assessed pursuant to R.I. Gen. Laws §42-17.6-3.

(32) In accordance with R.I. Gen. Laws § 42-17.6-3(a), the aforementioned NOV stated the facts giving rise to the alleged violations; of the statutes and/or regulations violated; the amount of the assessed administrative penalty for each violation; of the right to request an administrative hearing before DEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV and that the failure to request a hearing in the time proscribed would result in the associated proposed administrative penalty becoming final; and the manner of payment thereof.

(33) Pursuant to R.I. Gen. Laws §42-17.6-4(b) and §42-17.1-2(21)(i), by failing to appeal the issuance of the NOV and the proposed administrative penalty, one is deemed to have waived its right to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the Department and the proposed administrative penalty became final.

(34) Pursuant to *R.I. Gen. Laws* § 42-17.1-2(21)(vi), a Final Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Final Compliance Order rests with the Defendant.

(35) Defendant has failed or refused to comply with the administrative penalties assessed in the September 29, 2014 NOV.

(36) Each day on non-compliance represents a continuing violation of the Department's UST Regulations and constitute a separate offense subject to separate administrative penalties.

RELIEF REQUESTED

WHEREFORE, the Plaintiff, Janet L. Coit, in her capacity as Director of the Department, hereby requests that this honorable Court enter judgment in the Department's favor and grant the following relief:

- 1) Temporary, Preliminary and Permanent Injunctive Relief, ordering Defendants to:
 - A. Immediately take all necessary actions to bring the Property into compliance with the UST Regulations by performing any and all actions required by the Department:
 1. Within ninety (90) days submit a permanent closure application to the RIDEM-Office of Waste Management and complete the removal of the UST in accordance with Section 13.00 of the DEM's UST Regulations;
 2. Within thirty (30) days of the removal of the UST remove and properly dispose of any contaminated soil encountered during the tank closure and within ten (10) days of the soil disposal submit documentation of disposal to DEM in accordance with Section 13 of the DEM's *Oil Pollution Control Regulations*;
 3. Within sixty (60) days of receipt of written notification from DEM to conduct a site investigation of the Property, retain a qualified consultant to perform the site investigation and submit a Site Investigation Report to DEM within the time frame specified by the DEM in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations;
 4. Within sixty (60) days of receipt of written notification from the DEM to submit Corrective Action Plan ("CAP"), retain a qualified consultant to submit a proposed CAP to DEM in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an order of approval issued by DEM.
- 2) If Defendants fails to abide by the terms of paragraph A, as stated above within the time frame specified, then the Defendants shall be assessed an additional daily monetary penalty each day next until Defendants are in compliance;
- 3) Within thirty (30) days, remit to the Department the administrative penalty of Seven Thousand Eight Hundred and Seventy-Three (\$7,873.00) Dollars as set forth in the NOV; and
- 4) Such other relief as this Court deems just and equitable in accordance with the

facts of this case.

VERIFICATION

I, Tracey D'Amadio Tyrrell, Supervising Environmental Scientist, Department of Environmental Management, Office of Compliance & Inspection, first being duly sworn upon oath, hereby state that to the best of my knowledge and belief, the facts contained in this Complaint and the exhibits attached hereto are, true and accurate.

Name: Tracey D'Amadio Tyrrell
Title: Supervising Environmental Scientist

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this _____ day of December, 2017.

Notary Public
My commission expires:

Respectfully submitted,
JANET L. COIT,
in her capacity as DIRECTOR,
Rhode Island Department of
Environmental Management
By her attorney:

Dated: January 8, 2018

/s/Tricia Quest
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